

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

TILLMAN T. HENDERSON,

Petitioner,

vs.

SCOTT FRAKES, and MICHELLE  
CAPPS,

Respondents.

**4:19CV3022**

**MEMORANDUM AND ORDER**

This matter is before the court on Petitioner's Motion for Leave to Appeal in Forma Pauperis. ([Filing 40](#).) Petitioner filed a Notice of Appeal ([filing 37](#)) on July 27, 2020. Petitioner appeals from the court's Memorandum and Order and Judgment dated July 6, 2020. (Filings [33](#) & [34](#).) Petitioner also requests a certificate of appealability ([filing 39](#)) and the appointment of counsel ([filing 41](#); [filing 42](#)).

Upon review of Petitioner's Motion for Leave to Appeal in Forma Pauperis, the court finds Petitioner is entitled to proceed in forma pauperis on appeal.

The court in its Memorandum and Order and Judgment dated July 6, 2020, informed Petitioner that it would not issue a certificate of appealability in this matter. ([Filing 33 at CM/ECF p. 63](#).) The court has reviewed Petitioner's submission in support of his request for a certificate of appealability but finds no reason to reconsider its previous determination. Petitioner may request a certificate of appealability in the Eighth Circuit Court of Appeals. *See* 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22(b)(1).

Lastly, Petitioner has filed a motion asking this court to appoint him counsel on appeal. ([Filing 41](#); *see also* [Filing 42](#).) Petitioner's motion should be addressed to the Eighth Circuit Court of Appeals and, thus, will be denied without prejudice to reassertion before that Court.

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion for Leave to Appeal in Forma Pauperis ([filing 40](#)) is granted.
2. Petitioner's Motion for a Certificate of Appealability ([filing 39](#)) is denied.
3. Petitioner's Motion for Appointment of Counsel ([filing 41](#)) is denied without prejudice to reassertion before the Eighth Circuit Court of Appeals.

Dated this 28th day of July, 2020.

BY THE COURT:



Richard G. Kopf  
Senior United States District Judge